Supreme Court, U.S
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No. 14-1418

IN THE

Supreme Court of the United States

MOST REVEREND DAVID A. ZUBIK, ET AL.,
Petitioners,

v.

SYLVIA MATHEWS BURWELL, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

SUPPLEMENTAL BRIEF OF PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES..... ii

SUPPLEMENTAL BRIEF OF PETITIONERS 1

CONCLUSION 2

TABLE OF AUTHORITIES

Page(s)

CASES

Catholic Health Care Sys. v. Burwell,
No. 14-427, 2015 WL 4665049
(2d Cir. Aug. 7, 2015) 1

Dordt Coll. v. Burwell,
No 14-2726, 2015 WL 5449504
(8th Cir. Sept. 17, 2015) 1

E. Tex. Baptist Univ. v. Burwell,
793 F.3d 449 (5th Cir. 2015) 1

Eternal Word Television Network, Inc. v. Sec'y, U.S. Dep't of Health & Human Servs.,
756 F.3d 1339 (11th Cir. 2014) 2

Grace Schools v. Burwell,
Nos. 14-1430 & 14-1431, 2015 WL
5167841 (7th Cir. Sept. 4, 2015) 2

Little Sisters of the Poor v. Burwell,
794 F.3d 1151 (10th Cir. 2015) 1, 2

Little Sisters of the Poor v. Burwell,
Nos. 13-1540, 14-6026, 14-6028,
2015 WL 5166807
(10th Cir. Sept. 3, 2015) 2

Mich. Catholic Conference v. Burwell,
Nos. 13-2723, 13-6640, 2015 WL
4979692 (6th Cir. Aug. 21, 2015) 1

TABLE OF AUTHORITIES
(continued)

Page(s)

Priests for Life v. U.S. Dep't of Health & Human Servs.,
772 F.3d 229 (D.C. Cir. 2014) 1

Priests for Life v. U.S. Dep't of Health & Human Servs.,
No. 13-5368, 2015 U.S. App. LEXIS 8326 (D.C. Cir. May 20, 2015) 2

Sharpe Holdings, Inc. v. U.S. Dep't of Health & Human Servs.,
No. 14-1507, 2015 WL 5449491 (8th Cir. Sept. 17, 2015) 1

Univ. of Notre Dame v. Burwell,
786 F.3d 606 (7th Cir. 2015) 1, 2

SUPPLEMENTAL BRIEF OF PETITIONERS

There can now be no dispute that the circuits are divided on the issues presented in this petition. On September 17, 2015, the U.S. Court of Appeals for the Eighth Circuit issued two unanimous opinions holding that the plaintiffs in those cases "were substantially likely to succeed on the merits of their claim that the contraceptive mandate and the accommodation process substantially burdens their exercise of religion in violation of [the Religious Freedom Restoration Act (RFRA)] and that the current accommodation process is not the least restrictive means of furthering the government's interests." *Sharpe Holdings, Inc. v. U.S. Dep't of Health & Human Servs.*, No. 14-1507, 2015 WL 5449491, at *13 (8th Cir. Sept. 17, 2015); *Dordt Coll. v. Burwell*, No 14-2726, 2015 WL 5449504 (8th Cir. Sept. 17, 2015). These holdings conflict with the decision below of the U.S. Court of Appeals for the Third Circuit, Pet.App.1a, and with the decisions of the other circuits to uphold the Accommodation, *e.g.*, *Mich. Catholic Conference v. Burwell*, Nos. 13-2723, 13-6640, 2015 WL 4979692 (6th Cir. Aug. 21, 2015); *Catholic Health Care Sys. v. Burwell*, No. 14-427, 2015 WL 4665049 (2d Cir. Aug. 7, 2015); *Little Sisters of the Poor v. Burwell*, 794 F.3d 1151 (10th Cir. 2015); *E. Tex. Baptist Univ. v. Burwell*, 793 F.3d 449 (5th Cir. 2015); *Priests for Life v. U.S. Dep't of Health & Human Servs.*, 772 F.3d 229 (D.C. Cir. 2014); *Univ. of Notre Dame v. Burwell*, 786 F.3d 606 (7th Cir. 2015).

With the addition of Judges Wollman, Colloton, and Benton, fifteen circuit judges have now concluded that the Accommodation imposes a

substantial burden on plaintiffs' religious exercise. *See Grace Schools v. Burwell*, Nos. 14-1430 & 14-1431, 2015 WL 5167841, at *17 (7th Cir. Sept. 4, 2015) (Manion, J., dissenting); *Little Sisters of the Poor v. Burwell*, Nos. 13-1540, 14-6026, 14-6028, 2015 WL 5166807, at *1 (10th Cir. Sept. 3, 2015) (Hartz, J., dissenting); *Little Sisters of the Poor*, 794 F.3d at 1208 (Baldock, J., dissenting in part); *Priests for Life v. U.S. Dep't of Health & Human Servs.*, No. 13-5368, 2015 U.S. App. LEXIS 8326, at *42 (D.C. Cir. May 20, 2015) (Kavanaugh, J., dissenting); *id.* at *15 (Brown, J., dissenting); *Notre Dame*, 786 F.3d at 626 (7th Cir. 2015) (Flaum, J., dissenting); *Eternal Word Television Network, Inc. v. Sec'y, U.S. Dep't of Health & Human Servs.*, 756 F.3d 1339, 1345 (11th Cir. 2014) (Pryor, J., concurring). That question—as well as whether the Government's regulatory scheme can survive strict scrutiny—is now ripe for resolution by this Court.

As Petitioners have explained, of all the pending petitions, this case presents the most fully-developed factual record. It also presents the question of whether the Government may discriminate among equally religious organizations. Reply Br. at 11-13. Accordingly, this Court should take this unique opportunity to resolve the divide in authority on this exceptionally important issue.

CONCLUSION

For these reasons, the petition for certiorari should be granted.

Respectfully submitted,

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